

Order

Michigan Supreme Court
Lansing, Michigan

September 21, 2007

Clifford W. Taylor,
Chief Justice

133991

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

BARRY GLISSON, Successor Personal
Representative of the ESTATE OF SCOTT
GLISSON,

Plaintiff-Appellant,

v

SC: 133991
COA: 264433
Wayne CC: 04-416578-NH

DIANNE GERRITY, M.D.,
Defendant-Appellee,

and

ROBERT STUART LEVY, M.D., ROBERT
LEVY, M.D., P.C., DANIEL N. SCAFF, M.D.,
and PEDIATRICS AND ADOLESCENT
MEDICINE,

Defendants.

On order of the Court, the application for leave to appeal the March 6, 2007 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE part IV(A) of the judgment of the Court of Appeals, and we VACATE parts III and IV(B) of the judgment as unnecessary in light of our reversal of part IV(A). The Court of Appeals held that the plaintiff's June 2, 2004 complaint should be dismissed with prejudice pursuant to *Geralds v Munson Healthcare*, 259 Mich App 225 (2003), and *Mouradian v Goldberg*, 256 Mich App 566 (2003). We overruled *Geralds* and *Mouradian* in *Kirkaldy v Rim*, 478 Mich 581 (2007). As *Kirkaldy* states, "[u]nder MCL 600.5856(a) and MCL 600.2912d, the period of limitations is tolled when a complaint and affidavit of merit are filed and served on the defendant." *Kirkaldy*, 478 Mich 585. Even a defective affidavit of merit will "toll the period of limitations until the validity of the affidavit is successfully challenged in 'subsequent judicial proceedings.'" *Id.* at 586. In this case, the limitations period was tolled when the plaintiff filed and served the June 2, 2004 complaint and affidavit of merit. As a result, the limitations period had not expired when the plaintiff filed and served the August 9, 2005 amended complaint, accompanied by the June 3, 2005 amended affidavit of merit. Accordingly, we DISMISS without prejudice those claims concerning Dianne Gerrity, M.D. in the June 2, 2004 complaint, and we REMAND this case to the Wayne Circuit Court for further proceedings with regard to the amended pleadings. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



d0918

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 21, 2007

Corbin R. Davis

Clerk